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May 31, 2017

EPA Region 10
Office of the Regional Administrator

Via Certified Mail - Return Receipt Requested

Wilson Oil, Inc.
Attn: Managing Agent
110 Panel Way
Longview, WA 98632

Wilson Oil, Inc.
Attn: Managing Agent
P.O. Box 69
Longview, WA 98632

Wilcox & Flegel
Attn: Managing Agent
110 Panel Way
Longview, WA 98632

Wilcox & Flegel
Attn: Managing Agent
P.O. Box 69
Longview, WA 98632

**Re: NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT AND
REQUEST FOR COPY OF STORMWATER POLLUTION PREVENTION
PLAN**

Dear Managing Agent:

This letter is submitted on behalf of Columbia Riverkeeper, 111 Third Avenue, Hood River, OR 97031. Any response or correspondence related to this matter should be directed to Brian Knutsen at the address provided below. This letter is to provide you with sixty days notice of Columbia Riverkeeper's intent to file a citizen suit against Wilson Oil, Inc. and/or Wilcox & Flegel (hereafter, collectively, "Wilcox & Flegel") under section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below. This letter is also a request for a copy of the complete and current stormwater pollution prevention plan ("SWPPP") required by Wilcox & Flegel's National Pollution Discharge Elimination System ("NPDES") permit.

Wilcox & Flegel was granted coverage under the previous iteration of the Washington Industrial Stormwater General Permit ("ISGP") issued by the Washington Department of Ecology ("Ecology") effective January 1, 2010, which was modified effective July 1, 2012, and which expired on January 1, 2015, under NPDES Permit No. WAR006648 (the "2010 Permit"). Subsequently, Ecology granted Wilcox & Flegel coverage under the current iteration of the Washington ISGP effective January 2, 2015, which is set to expire on December 31, 2019, under NPDES Permit No. WAR006648 (the "2015 Permit").

Wilcox & Flegel has violated and continues to violate the terms and conditions of the 2010 Permit and the 2015 Permit (collectively, the "Permits") with respect to operations of, and discharges of stormwater and pollutants from, its facility located at or near 110 Panel Way, Longview, WA 98632 and 95 Panel Way, Longview, WA 98632 (hereinafter, the

“facility”). The facility subject to this notice includes any contiguous or adjacent properties owned, operated, or used by Wilcox & Flegel.

I. COLUMBIA RIVERKEEPER’S COMMITMENT TO PROTECTING A FISHABLE AND SWIMABLE COLUMBIA RIVER.

Columbia Riverkeeper’s mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Columbia Riverkeeper is a non-profit organization with members who live, recreate, and work throughout the Columbia River basin, including nearby and downstream of Longview, where Wilcox & Flegel’s facility discharges stormwater.

Threats facing the Columbia River are severe by any measure. *See Columbia River Basin State of River Report for Toxics*, Environmental Protection Agency, Region 10 (January 2009) (available online at: <http://yosemite.epa.gov/r10/ecocomm.nsf/Columbia/SoRR/>). In fact, the vast majority of rivers and streams in Washington fail to meet basic state water quality standards for pollutants such as toxics and temperature. *See State of Washington 303(d) List* (available online at: <http://www.ecy.wa.gov/programs/wq/303d/index.html>). These standards are designed to protect designated uses, including aquatic life, fishing, swimming, and drinking water.

Stormwater runoff is “one of the great challenges of water pollution control” and “is a principal contributor to water quality impairment of waterbodies nationwide.” *See National Research Council, Urban Stormwater Management in the United States*, (Oct. 15, 2008) (available online at: http://www.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf). When rain sends runoff across industrial facilities, city streets, and construction projects, the water picks up contaminants that drain into waterways such as the Columbia River. These toxics accumulate in local fish, wildlife, and birds. To address this leading cause of water quality impairment, Columbia Riverkeeper invests significant time and resources in reducing pollutant loads from industrial, municipal, and construction stormwater sources.

This Notice of Intent to Sue Wilcox & Flegel is part of Columbia Riverkeeper’s effort to improve water quality in the Columbia River for purposes including swimming, habitat quality, and subsistence, recreational, and commercial fishing. Columbia Riverkeeper has serious concerns about the impacts of Wilcox & Flegel’s operations and industrial stormwater discharges on the Columbia River. As discussed below, Wilcox & Flegel has consistently violated permit conditions and exceeded the Permits’ benchmark pollutant discharge levels. Wilcox & Flegel’s operations and stormwater discharges degrade the Columbia River’s water quality and place the health and well-being of all who use the Columbia at risk.

II. COMPLIANCE WITH STANDARDS.

A. Violations of Water Quality Standards.

Condition S10.A of the Permits prohibits discharges that cause or contribute to violations of water quality standards. Water quality standards are the foundation of the CWA and Washington's efforts to protect clean water. Water quality standards represent the U.S. Environmental Protection Agency ("EPA") and Ecology's determination, based on scientific studies, of the thresholds at which pollution starts to cause significant adverse effects on fish or other beneficial uses. Notably, Ecology has determined that the segment of the Columbia River into which Wilcox & Flegel discharges industrial stormwater as not meeting water quality standards for bacteria. See Ecology, *2015 Water Quality Atlas* (available online at: <http://www.ecy.wa.gov/programs/wq/303d/currentassessmt.html>).

A discharger must comply with both narrative and numeric water quality standards. WAC 173-201A-010; WAC 173-201A-510 ("No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter."). Narrative water quality standards provide legal mandates that supplement the numeric standards. Furthermore, narrative water quality standards apply with equal force, even when Ecology has established numeric water quality standards. Specifically, Condition S10.A of the Permits requires that Wilcox & Flegel's discharges not cause or contribute to violations of Washington State's water quality standards.

Wilcox & Flegel discharges industrial stormwater to the Columbia River directly and/or via a stormwater conveyance system. Wilcox & Flegel discharges stormwater that contains elevated levels of contaminants as indicated in Table 1, below, showing discharges from the facility that exceeded the Permits' benchmarks for turbidity, zinc, and copper, and that exceeded the applicable water quality standard for fecal coliform bacteria. Discharges of stormwater from the facility cause and/or contribute to violations of water quality standards for turbidity, zinc, copper, bacteria, and aesthetic criteria in the Columbia River and have occurred each and every day during the last five years on which there was 0.1 inch or more of precipitation, and continue to occur. These water quality standards include those set forth in WAC 173-201A-200; -240; and -260(2).

Table 1. Wilcox & Flegel Stormwater Monitoring Data					
Monitoring Period	Monitoring Point	Turbidity BM*:25 NTU	Zinc BM:117 µg/L	Copper BM:14 µg/L	Fecal coliform WQS**:100 colonies/100 mL
1Q 2010	1	33.6			
	2		121		
	4		300		
2Q 2010	2	30.2	141	15.4	
	4	25.2	163		
3Q 2010	1	33.8	225	19.1	
	2		226	18.8	
	4		550		
4Q 2010	1		136		
	4		1370	98.6	
1Q 2011	2		167		
	4		1180		
2Q 2011	1		185		
	2		211	22.7	
	4		1620		
3Q 2011	1	50	703	39.2	
	2		485	30.9	
	4		1800	22.4	
4Q 2011	1		217	16	
	2		193	17	
	4		954		
1Q 2012	4		506		
2Q 2012	2		206	25	
	4		370		
4Q 2012	1		198		>1600
	2				110
	3		625		
1Q 2013	1	28.4	139	14.4	540
	2	61	159	17.1	240
	4		831		
2Q 2013	1		177		900
	2				>1600
3Q 2013	1		300	16.9	920
	2		1600		1600
4Q 2013	1				>1600
	2				540
	3				540
1Q 2014	2	28.8			
2Q 2014	1				110
	2	28.7			280
3Q 2014	1		255		1600
	2		121		1600
	3		134		540
4Q 2014	1				920
	2	32	136		>1600
1Q 2015	A				350
	B				350
2Q 2015	A				1600
	B				1600
	C		149		540

4Q 2015	A				1600
	B				1600
	C				1600
1Q 2016	A				104
	B				104
3Q 2016	A			30.3	
	B			30.3	
	C		162		500
4Q 2016	C		331.5		1600
1Q 2017	C		169		
	D		126		

* "BM" stands for "benchmark;" the BM values listed in Table 1 are the benchmark levels established in the Permits.

** "WQS" stands for "water quality standard;" the 100 fecal coliform colonies per 100 mL water quality standard for primary contact recreation is established at WAC 173-201A-200. Primary contact recreation is a designated beneficial use of the Columbia River near Longview. WAC 173-201A-602, Table 602.

B. Compliance with Permitting Standards.

Condition S10.C of the Permits requires Wilcox & Flegel to apply all known and reasonable methods of prevention, control and treatment ("AKART") to all discharges, including preparing and implementing an adequate SWPPP and best management practices ("BMPs"). Wilcox & Flegel has violated and continues to violate these conditions by failing to apply AKART to its discharges by, among other things, failing to implement an adequate SWPPP and BMPs as evidenced by the elevated levels of pollutants in its discharge indicated in Table 1 above and as described below. These violations have occurred on each and every day during the last five years and continue to occur every day.

Condition S1.A of the Permits requires that all discharges and activities be consistent with the terms and conditions of the permit. Wilcox & Flegel has violated this condition by discharging and acting inconsistent with the conditions of the Permits as described in this Notice of Intent to Sue.

III. STORMWATER POLLUTION PREVENTION PLAN VIOLATIONS.

The extensive violations of the Permits and the ongoing discharges of polluted industrial stormwater documented in the publically available records indicate that Wilcox & Flegel is not fully implementing a SWPPP that includes adequate BMPs and that otherwise includes all of the required SWPPP components. Columbia Riverkeeper therefore provides notice, based upon information and belief, that Wilcox & Flegel has not developed and is not implementing a SWPPP that complies with the requirements of the Permits as described below. These violations have occurred on each and every day during the last five years and continue to occur every day.

Condition S3.A.1 of the Permits requires Wilcox & Flegel to develop and implement a SWPPP as specified in these permits. Condition S3.A.2 of the Permits requires the SWPPP to specify BMPs necessary to provide AKART and ensure that discharges do not cause or contribute to violations of water quality standards. On information and belief, Wilcox & Flegel has violated these requirements of the Permits by failing to prepare and/or implement a SWPPP that includes AKART BMPs and BMPs necessary to meet state water quality standards.

Condition S3.A of the Permits requires Wilcox & Flegel to have and fully implement a SWPPP that is consistent with permit requirements and update the SWPPP as necessary to maintain compliance with permit conditions. On information and belief, Wilcox & Flegel has violated these requirements of the Permits because its SWPPP is not consistent with permit requirements, is not fully implemented, and has not been updated as necessary.

The SWPPP fails to satisfy the requirements of Condition S3 of the Permits because it does not adequately describe BMPs. Condition S3.B.4 of the Permits requires that the SWPPP include a description of the BMPs that are necessary for the facility to eliminate or reduce the potential to contaminate stormwater. Condition S3.A.3 of the Permits requires that the SWPPP include BMPs consistent with approved stormwater technical manuals or document how stormwater BMPs included in the SWPPP are demonstratively equivalent to the practices contained in the approved stormwater technical manuals, including the proper selection, implementation, and maintenance of all applicable and appropriate BMPs. Wilcox & Flegel's SWPPP does not comply with these requirements because it does not adequately describe BMPs, does not include BMPs consistent with approved stormwater technical manuals, and does not include BMPs that are demonstratively equivalent to such BMPs with documentation of BMP adequacy.

Wilcox & Flegel's SWPPP fails to satisfy the requirements of Condition S3.B.2 of the Permits because it fails to include a facility assessment. The SWPPP fails to include an adequate facility assessment because it does not describe the industrial activities conducted at the site; the general layout of the facility, including buildings and storage of raw materials; the flow of goods and materials through the facility; the regular business hours; and the seasonal variations in business hours or in industrial activities.

Wilcox & Flegel's SWPPP fails to satisfy the requirements of Condition S3.B.1 of the Permits because it does not include a site map that identifies significant features, the stormwater drainage and discharge structures, the stormwater drainage areas for each stormwater discharge point off-site, a unique identifying number for each discharge point, each sampling location with a unique identifying number, paved areas and buildings, areas of pollutant contact associated with specific industrial activities, conditionally approved non-stormwater discharges, surface water locations, areas of existing and potential soil erosion, vehicle maintenance areas, and lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes.

Wilcox & Flegel's SWPPP fails to comply with Condition S3.B.2.b of the Permits because it does not include an inventory of industrial activities that identifies all areas

associated with industrial activities that have been, or may potentially be, sources of pollutants. The SWPPP does not identify all areas associated with: loading and unloading of dry bulk materials or liquids; outdoor storage of materials or products; outdoor manufacturing and processing; on-site dust or particulate-generating processes; on-site waste treatment, storage, or disposal; vehicle and equipment fueling, maintenance, and/or cleaning; roofs or other surfaces exposed to air emissions from a manufacturing building or a process area; and roofs or other surfaces composed of materials that may be mobilized by stormwater as required by these permit conditions.

Wilcox & Flegel's SWPPP does not comply with Condition S3.B.2.c of the Permits because it does not include an adequate inventory of materials. Specifically, the SWPPP does not include: an inventory of materials that lists the types of materials handled at the site that potentially may be exposed to precipitation or runoff and that could result in stormwater pollution; a short narrative for each of the materials describing the potential for the pollutants to be present in stormwater discharge (which is updated when data becomes available to verify the presence or absence of the pollutants); a narrative description of any potential sources of pollutants from past activities or from materials and spills that were previously handled, treated, stored, or disposed of in a manner to allow ongoing exposure to stormwater, as required. The SWPPP does not include the method and location of on-site storage or disposal of such materials and a list of significant spills and significant leaks of toxic or hazardous pollutants, as these permit conditions require.

Wilcox & Flegel's SWPPP does not comply with Condition S3.B.3 of the Permits because it does not identify specific individuals by name or title whose responsibilities include SWPPP development, implementation, maintenance, and modification.

Wilcox & Flegel's SWPPP does not comply with Condition S3.B.4.b.i of the Permits because it does not include adequate required operational source control BMPs in the following categories: good housekeeping (including defining ongoing maintenance and cleanup of areas that may contribute pollutants to stormwater discharges, and a schedule/frequency for each housekeeping task); preventive maintenance (including BMPs to inspect and maintain stormwater drainage, source controls, treatment systems, and plant equipment and systems, and the schedule/frequency for each task); spill prevention and emergency cleanup plan (including BMPs to prevent spills that can contaminate stormwater, material handling procedures, storage requirements, cleanup equipment and procedures, and spill logs); employee training (including an overview of what is in the SWPPP, how employees make a difference in complying with the SWPPP, spill response procedures, good housekeeping, maintenance requirements, material management practices, how training will be conducted, the frequency/schedule of training, and a log of the dates on which specific employees received training); inspections and recordkeeping (including documentation of procedures to ensure compliance with permit requirements for inspections and recordkeeping, including identification of personnel who conduct inspections, provision of a tracking or follow-up procedure to ensure that a report is prepared and appropriate action taken in response to visual monitoring, definition of how Wilcox & Flegel will comply with signature and record retention requirements, and certification of compliance with the SWPPP and Permit).

Wilcox & Flegel's SWPPP does not comply with Condition S3.B.4.b.i.7 of the Permits because it does not include measures to identify and eliminate the discharge of process wastewater, domestic wastewater, noncontact cooling water, wash water, and other illicit discharges to stormwater sewers or to surface waters and ground waters of the state.

Wilcox & Flegel's SWPPP does not comply with Condition S3.B.4.b.ii of the Permits because it does not include required structural source control BMPs to minimize the exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff. Wilcox & Flegel's SWPPP does not comply with Condition S3.B.4.b.iii of the Permits because it does not include treatment BMPs as required.

Wilcox & Flegel's SWPPP fails to comply with Condition S3.B.4.b.v of the Permits because it does not include BMPs to prevent the erosion of soils or other earthen materials and prevent off-site sedimentation and violations of water quality standards.

Wilcox & Flegel's SWPPP fails to satisfy the requirements of Condition S3.B.5 of the Permits because it fails to include an adequate stormwater sampling plan. The SWPPP does not: include a sampling plan that identifies points of discharge to surface waters, storm sewers, or discrete ground water infiltration locations; document why each discharge point is not sampled; identify each sampling point by its unique identifying number; identify staff responsible for conducting stormwater sampling; specify procedures for sampling collection and handling; specify procedures for sending samples to the a laboratory; identify parameters for analysis, holding times, preservatives, laboratory quantization levels, and analytical methods; or specify the procedure for submitting the results to Ecology.

Wilcox & Flegel's SWPPP fails to satisfy the requirements of Condition S6.C and Table 5, footnote (h) of the 2010 Permit and the requirements of Condition S6.C and Table 6, footnote (i) of the 2015 Permit because it does not contain the required BMPs for facilities discharging into a segment of a waterway that is listed as impaired for fecal coliform bacteria on Washington's 303(d) list. Specifically, the SWPPP does not: use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility; require at least one annual dry weather inspection of the stormwater system to identify and eliminate sanitary sewer cross-connections; require structural source control BMPs to address on-site activities and sources that could cause bacterial contamination (e.g., dumpsters, compost piles, food waste, and animal products); or require operational source control BMPs to prevent bacterial contamination from any known sources of fecal coliform bacteria (e.g., animal waste).

IV. MONITORING AND REPORTING VIOLATIONS.

A. Failure to Collect Quarterly Samples.

Condition S4.B of the Permits requires Wilcox & Flegel to collect a sample of its stormwater discharge once during every calendar quarter. Conditions S3.B.5.b and S4.B.2.c of the Permits require Wilcox & Flegel to collect a stormwater sample at each distinct point of

discharge offsite—except for substantially identical outfalls, in which case only one of the substantially identical outfalls must be sampled. These conditions set forth sample collection criteria, but require the collection of a sample even if the criteria cannot be met.

Wilcox & Flegel violated these requirements by failing to collect stormwater samples at any of its discharge points during the following monitoring periods: the third quarter of 2012, the third quarter of 2015, and the second quarter of 2016.

Wilcox & Flegel also violated and continues to violate these conditions because it does not sample each distinct point of discharge off-site each quarter. These violations have occurred and continue to occur each and every quarter during the last five years that Wilcox & Flegel was and is required to sample its stormwater discharges, including the quarters in which it collected stormwater discharge samples from some, but not all, points of discharge. These violations will continue until Wilcox & Flegel commences monitoring all points of discharge that are not substantially identical.

B. Failure to Analyze Quarterly Samples.

Conditions S5.A and S5.B of the Permits require Wilcox & Flegel to analyze all quarterly stormwater samples for turbidity, pH, total copper, total zinc, oil sheen, and petroleum hydrocarbons (diesel fraction). Additionally, Condition S6.C.1 and Table 5 of the 2010 Permit and Condition S6.C.1 and Table 6 of the 2015 Permit require Wilcox & Flegel to analyze all quarterly stormwater samples for fecal coliform bacteria.

Wilcox & Flegel violated these conditions by failing to analyze stormwater samples for all of the required parameters during the following monitoring periods: the third quarter of 2012, the third quarter of 2015, and the second quarter of 2016. Wilcox & Flegel also violated these requirements by failing to analyze stormwater samples for petroleum hydrocarbons (diesel fraction) during the following monitoring periods: the fourth quarter of 2012; the first, second, third, and fourth quarters of 2013; and the first, second, third, and fourth quarters of 2014.

C. Failure to Comply with Visual Monitoring Requirements.

Condition S7.A of the Permits requires that monthly visual inspection be conducted at the facility by qualified personnel. Per Condition S7.B of the Permits, each inspection is to include: observations made at stormwater sampling locations and areas where stormwater associated with industrial activity is discharged; observations for the presence of floating materials, visible oil sheen, discoloration, turbidity, odor, etc. in the stormwater discharges; observations for the presence of illicit discharges; a verification that the descriptions of potential pollutant sources required by the permit are accurate; a verification that the site map in the SWPPP reflects current conditions; and an assessment of all BMPs that have been implemented (noting the effectiveness of the BMPs inspected, the locations of BMPs that need maintenance, the reason maintenance is needed and a schedule for maintenance, and locations where additional or different BMPs are needed).

Condition S7.C of the Permits requires Wilcox & Flegel to record the results of each inspection in an inspection report or checklist that is maintained on-site and that documents the observations, verifications, and assessments required by the Permits. The report/checklist must include: the time and date of the inspection; the locations inspected; a statement that, in the judgment of the person conducting the inspection and the responsible corporate officer, the facility is either in compliance or out of compliance with the SWPPP and the 2010 Permit or 2015 Permit (whichever applicable); a summary report and schedule of implementation of the remedial actions that Wilcox & Flegel plans to take if the site inspection indicates that the facility is out of compliance; the name, title, signature, and certification of the person conducting the facility inspection; and a certification and signature of the responsible corporate officer or a duly authorized representative.

Wilcox & Flegel is in violation of these requirements of Condition S7 of the Permits because, during the last five years, Wilcox & Flegel has failed to conduct the requisite visual monitoring and inspections, failed to prepare and maintain the requisite inspection reports or checklists, and failed to make the requisite certifications and summaries.

V. CORRECTIVE ACTION VIOLATIONS.

A. Violations of the Level One Requirements.

Condition S8.B of the Permits requires Wilcox & Flegel to take specified actions, called a "Level One Corrective Action," each time quarterly stormwater sample results exceed a benchmark value or are outside the benchmark range for pH. Condition S8.A of the 2015 Permit requires that Wilcox & Flegel implement any Level One Corrective Action required by the 2010 Permit.

For a Level One Corrective action, Condition S8.B.1.a of the Permits requires Wilcox & Flegel to "[c]onduct an inspection to investigate the cause" of the benchmark exceedance. Additionally, for a Level One Corrective Action, Condition S8.B of the Permits requires Wilcox & Flegel to: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits and contains the correct BMPs from the applicable Stormwater Management Manual; (2) make appropriate revisions to the SWPPP to include additional operational source control BMPs with the goal of achieving the applicable benchmark values in future discharges and sign and certify the revised SWPPP in accordance with the Permits; and (3) summarize the Level One Corrective Action in the Annual Report required under Condition S9.B of the Permits. Condition S8.B of the Permits requires Wilcox & Flegel to implement the revised SWPPP as soon as possible, and no later than the DMR due date for the quarter the benchmark was exceeded.

Conditions S5.A and S5.B and Tables 2 and 3 of the Permits establish the following applicable benchmarks: turbidity 25 NTU; pH 5 – 9 SU; no visible oil sheen; total copper 14 µg/L; total zinc 117 µg/L, and petroleum hydrocarbons (diesel fraction) 10 mg/L.

Wilcox & Flegel has violated the Level One Corrective Action requirements of the Permits described above by failing to conduct a Level One Corrective Action in accordance

with permit conditions, including the required investigation, the required review, revision, and certification of the SWPPP, the required implementation of additional BMPs, and the required summarization in the annual report each time in the past five years that quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH, including the benchmark excursions listed in Table 1 in Section II.A of this letter.

These benchmark excursions are based upon information currently available to Columbia Riverkeeper from Ecology's publicly available records. Columbia Riverkeeper provides notice of its intent to sue Wilcox & Flegel for failing to comply with all of the Level One Corrective Action requirements described above each time during the last five years that quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH.

B. Violations of the Level Two Requirements.

Condition S8.C of the Permits requires Wilcox & Flegel take specified actions, called a "Level Two Corrective Action," each time quarterly stormwater sample results exceed an applicable benchmark value or are outside the benchmark range for pH for any two quarters during a calendar year. Condition S8.A of the 2015 Permit requires that Wilcox & Flegel implement any Level Two Corrective Action required by the 2010 Permit.

As described by Condition S8.C of the Permits, a Level Two Corrective Action requires Wilcox & Flegel: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional structural source control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and sign and certify the revised SWPPP in accordance with Condition S3 of the Permits; and (3) summarize the Level Two Corrective Action (planned or taken) in the Annual Report required under Condition S9.B of the Permits. Condition S8.C.4 of the Permits requires that Wilcox & Flegel implement the revised SWPPP according to condition S3 of the Permits and the applicable stormwater management manual as soon as possible, but no later than August 31 of the following year.

The Permits establishes the benchmarks applicable to Wilcox & Flegel described in Section V.A of this notice of intent to sue letter.

Wilcox & Flegel has violated the requirements of the Permits described above by failing to conduct a Level Two Corrective Action in accordance with permit conditions—including the required review, revision, and certification of the SWPPP; the required implementation of additional BMPs to ensure that all points of discharge from the facility meet benchmarks (not just the sampled point of discharge), including additional structural source control BMPs; and the required summarization in the annual report—each time since 2010 that Wilcox & Flegel's quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH for any two quarters during a calendar year. As indicated in Table 1 in Section II.A of this letter, these violations include, but are not limited to, Wilcox & Flegel's failure to fulfill these obligations triggered by: copper exceedances in 2013; zinc exceedances in 2014; and zinc exceedances in 2016.

The benchmark excursions identified in Table 1 of this letter are based upon information currently available to Columbia Riverkeeper from Ecology's publicly available records. Columbia Riverkeeper provides notice of its intent to sue Wilcox & Flegel for failing to comply with all of the Level Two Corrective Action requirements each and every time quarterly stormwater sample results exceeded an applicable benchmark value or were outside the benchmark range for pH for any two quarters during a calendar year, including any such excursions that are not reflected in Table 1 above, since 2010.

C. Violations of the Level Three Requirements.

Condition S8.D of the Permits requires Wilcox & Flegel take specified actions, called a "Level Three Corrective Action," each time quarterly stormwater sample results exceed an applicable benchmark value or are outside the benchmark range for pH for any three quarters during a calendar year. Condition S8.A of the 2015 Permit requires that Wilcox & Flegel implement any Level Three Corrective Action required by the 2010 Permit.

As described by Condition S8.D of the Permits, a Level Three Corrective Action requires Wilcox & Flegel to: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and additional operational and/or structural source control BMPs if necessary for proper function and maintenance of treatment BMPs; and (3) summarize the Level Three Corrective Action (planned or taken) in the Annual Report required under Condition S9.B of the Permits, including information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed.

Condition S8.D.2.b of the 2010 Permit requires that a licensed professional engineer, geologist, hydrogeologist, or certified professional in stormwater quality must design and stamp the portion of the SWPPP that addresses stormwater treatment structures or processes. Condition S8.D.3 of the 2010 Permit requires that, before installing BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, Wilcox & Flegel submit an engineering report, plans, specifications, and an operations and maintenance manual to Ecology for review in accordance with chapter 173-204 of the Washington Administrative Code. The engineering report must be submitted no later than the May 15 prior to the Level Three Corrective Action Deadline. Condition S8.D.3 of the 2010 Permit requires that the plans and specifications and the operations and maintenance manual must be submitted to Ecology at least 30 days before construction/installation.

Condition S8.D.2.b of the 2015 Permit requires that a Qualified Industrial Stormwater Professional shall review the revised SWPPP, sign the SWPPP Certification Form, and certify that it is reasonably expected to meet the ISGP benchmarks upon implementation. Additionally, Condition S8.D.3 of the 2015 Permit requires that, before installing any BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect,

convey, treat, reclaim, or dispose of industrial stormwater, Wilcox & Flegel submit an engineering report, certified by a licensed professional engineer, to Ecology for review. The report must contain: (1) a brief summary of the treatment alternatives considered and why the proposed option was selected, including cost estimates of ongoing operation and maintenance and disposal of any spent media; (2) the basic design data, including characterization of stormwater influent and sizing calculations for the treatment units; (3) a description of the treatment process and operation, including a flow diagram; (4) the amount and kind of chemicals used in the treatment process, if any; (5) the expected results from the treatment process including the predicted stormwater discharge characteristics; and (6) a statement, expressing sound engineering justification — through the use of pilot plant data, results from similar installations, and/or scientific evidence — that the proposed treatment is reasonably expected to meet the permit benchmarks. The engineering report must be submitted no later than the May 15 prior to the Level Three Corrective Action Deadline. Condition S8.D.3.c of the 2015 Permit requires that an operations and maintenance manual must be submitted to Ecology at least 30 days after construction/installation of the treatment BMPs is complete.

Condition S8.D.5 of the Permits requires that Wilcox & Flegel fully implement the revised SWPPP according to Condition S3 of the Permits and the applicable stormwater management manual as soon as possible, but no later than September 30 of the following year.

The Permits establish the benchmarks applicable to Wilcox & Flegel described in Section V.A of this notice of intent to sue letter.

Wilcox & Flegel has violated the requirements of the Permits described above by failing to conduct a Level Three Corrective Action in accordance with applicable permit conditions—including the required review, revision and certification of the SWPPP, including the requirement to have a specified professional design and stamp the portion of the SWPPP pertaining to treatment; the required implementation of additional BMPs, including additional treatment BMPs to ensure that all points of discharge from the facility meet benchmarks (not just the sampled point of discharge); the required submission of an engineering report, plans, specifications, and an operations and maintenance plan; and the required summarization in the annual report—each time since 2010 that Wilcox & Flegel's quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH for any three quarters during a calendar year. As indicated in Table 1 in Section II.A of this letter, these violations include, but are not limited to, Wilcox & Flegel's failure to fulfill these obligations triggered by: turbidity, zinc, and copper exceedances in 2010; zinc and copper exceedances in 2011; zinc exceedances in 2012; zinc exceedances in 2013; and turbidity exceedances in 2014.

The benchmark excursions identified in Table 1 are based upon information currently available to Columbia Riverkeeper from Ecology's publicly available records. Columbia Riverkeeper provides notice of its intent to sue Wilcox & Flegel for failing to comply with all of the Level Three Corrective Action requirements each and every time quarterly stormwater sample results exceeded an applicable benchmark value or were outside the benchmark range

for pH for any three quarters during a calendar year, including any such excursions that are not discussed herein, since 2010.

Condition S8.D.5.e of the 2015 Permit states "For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions." *See also* 2010 Permit, Condition S8.D.5.d (same). These Conditions do not waive Wilcox & Flegel's duty to prepare Level Three Corrective Actions because Wilcox & Flegel failed to develop and implement Level Three Corrective Actions pursuant to Condition S8.D of the Permits.

VI. VIOLATIONS OF THE ANNUAL REPORT REQUIREMENTS.

Condition S9.B of the Permits requires Wilcox & Flegel to submit an accurate and complete annual report to Ecology no later than May 15 of each year. The annual report must include corrective action documentation as required in Condition S8.B – D of the Permits. If a corrective action is not yet completed at the time of submission of the annual report, Wilcox & Flegel must describe the status of any outstanding corrective action. Each annual report must: (1) identify the conditions triggering the need for corrective action review; (2) describe the problem and identify the dates when the problem was discovered; (3) summarize any Level 1, 2, or 3 Corrective Actions completed during the previous calendar year and include the dates those corrective actions were completed; and (4) describe the status of any Level 2 or 3 corrective actions triggered during the previous calendar year and identify the date Wilcox & Flegel expects to complete those corrective actions. Wilcox & Flegel has violated these permit requirements by failing to include all of the required information in each annual report that Wilcox & Flegel submitted in the last 5 years, including but not limited to the following actions.

Wilcox & Flegel's 2012 Annual Report does not contain the required information for the Level Three Corrective Action that Wilcox & Flegel triggered for zinc in the fourth quarter of 2012. For instance, the 2012 Annual Report should have:

- Contained a summary of the Level Three Corrective Action planned or taken for the zinc exceedances in 2012, including the dates on which these actions were, or would be, completed and information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed to address turbidity (2010 Permit, Conditions S9.B.2, S8.D.4, S8.B.2, and S9.B.3.c).
- Identified the condition triggering in 2012 the need for Corrective Action review for zinc (2010 Permit, Condition S9.B.3.a).
- Described the problem(s) that caused the zinc exceedances in 2012 and identified the dates on which they were discovered (2010 Permit, Condition S9.B.3.b).

Wilcox & Flegel's 2012 Annual Report also does not contain the required information for the Level One Corrective Actions the Wilcox & Flegel triggered in the first, second, and fourth quarters of 2012 for zinc. For instance, the 2012 annual report should have:

- Summarized the Level One Corrective Actions taken for zinc in the first, second, and fourth quarters, including the dates on which these actions were completed (2010 Permit, Conditions S9.B.2, S8.B.2, and S9.B.3.c).
- Described the status of the outstanding Level One Corrective Actions for zinc from the first, second, and fourth quarters (2010 Permit, Condition S9.B.2).
- Identified the condition triggering the need for corrective action review for the first, second, and fourth quarters (2010 Permit, Condition S9.B.3.a).
- Described the problem(s) that caused the zinc exceedances and identified the dates on which they were discovered (2010 Permit, Condition S9.B.3.b).

Wilcox & Flegel's 2012 Annual report also does not describe the status of the outstanding Level Three Corrective Actions for zinc and copper that were triggered in 2011, as required (2010 Permit, Conditions S9.B.3.c and S9.B.3.d).

Wilcox & Flegel's 2013 Annual Report does not contain the required information for the Level Three Corrective Action that Wilcox & Flegel triggered for zinc in 2013. For instance, the 2013 Annual Report should have:

- Contained a summary of the Level Three Corrective Action planned or taken for the zinc exceedances in 2013, including the dates on which these actions were, or would be, completed and information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed to address turbidity (2010 Permit, Conditions S9.B.2, S8.D.4, S8.B.2, and S9.B.3.c).
- Identified the condition triggering the need in 2013 for Corrective Action review for zinc (2010 Permit, Condition S9.B.3.a).
- Described the problem(s) that caused the zinc exceedances in 2013 and identified the dates on which they were discovered (2010 Permit, Condition S9.B.3.b).

Wilcox & Flegel's 2013 Annual Report does not contain the required information for the Level Two Corrective Action that Wilcox & Flegel triggered for copper in the third quarter of 2013. For instance, the 2013 Annual Report should have:

- Contained a summary of the Level Two Corrective Action planned or taken for the copper exceedances in 2013, including the dates on which these actions were, or would be, completed (2010 Permit, Conditions S9.B.2, S8.B.2, and S9.B.3.c).
- Identified the condition in 2013 triggering the need for Corrective Action review for copper (2010 Permit, Condition S9.B.3.a).
- Described the problem(s) that caused the copper exceedances in 2013 and identified the dates on which they were discovered (2010 Permit, Condition S9.B.3.b).

Wilcox & Flegel's 2013 Annual Report also does not contain the required information for the Level One Corrective Actions the Wilcox & Flegel triggered in the first, second, and third quarters of 2013 for zinc; in the first and third quarters for copper; and in the first quarter for turbidity. With respect to each of these benchmark exceedances, the 2013 annual report should have:

- Summarized the Level One Corrective Actions taken, including the dates on which these actions were completed (2010 Permit, Conditions S9.B.2, S8.B.2, and S9.B.3.c).

- Described the status of the outstanding Level One Corrective Actions (2010 Permit, Condition S9.B.2).
- Identified the conditions in 2013 triggering the need for the Corrective Action reviews (2010 Permit, Condition S9.B.3.a).
- Described the problem(s) that caused the exceedances and identified the dates on which they were discovered (2010 Permit, Condition S9.B.3.b).

Wilcox & Flegel's 2013 Annual report also does not describe the status of the outstanding Level Three Corrective Action triggered for zinc in 2012, as required (2010 Permit, Conditions S9.B.3.c and S9.B.3.d).

Wilcox & Flegel's 2014 Annual Report does not contain the required information for the Level Two Corrective Action that Wilcox & Flegel triggered for zinc in the fourth quarter of 2014. For instance, the 2014 Annual Report should have:

- Summarized the Corrective Action taken for the zinc exceedances in 2014, including information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether the treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed to address zinc (2015 Permit, Conditions S9.B.2 and S8.D.4).
- Described the problem(s) that caused the zinc exceedances and identified the dates on which they were discovered (2015 Permit, Condition S9.B.3.b).

Wilcox & Flegel's 2014 Annual Report does not contain the required information for the Level Three Corrective Action that Wilcox & Flegel triggered for turbidity in the fourth quarter of 2014. For instance, the 2014 Annual Report should have:

- Described the problem(s) that caused the turbidity exceedances in 2014 and identified the dates on which they were discovered (2015 Permit, Condition S9.B.3.b).
- Summarized the Level Three Corrective Action planned or taken for the turbidity in 2014, including the dates on which these actions were, or would be, completed and information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed to address turbidity (2015 Permit, Conditions S9.B.2, S8.D.4, S8.B.2, and S9.B.3.c).

Wilcox & Flegel's 2014 Annual Report also does not contain the required information for the Level One Corrective Actions the Wilcox & Flegel triggered in the third and fourth quarters for zinc. With respect to those benchmark exceedances, the 2014 annual report should have:

- Summarized the Level One Corrective Actions taken, including the dates on which these actions were completed (2015 Permit, Conditions S9.B.2, S8.B.2, and S9.B.3.c).
- Described the status of the outstanding Level One Corrective Actions (2015 Permit, Condition S9.B.2).
- Identified the conditions triggering the need for the Corrective Action reviews (2015 Permit, Condition S9.B.3.a).
- Described the problem(s) that caused the exceedances and identified the dates on which they were discovered (2015 Permit, Condition S9.B.3.b).

Wilcox & Flegel's 2015 Annual Report inaccurately reports that the facility had no benchmark exceedances in 2015 and the report does not contain the required information for the Level One Corrective Action that the Wilcox & Flegel triggered in the second quarter of 2015 for zinc. With respect to this benchmark exceedance, the 2015 Annual Report should have:

- Summarized the Level One Corrective Action taken, including the date on which the action was completed (2015 Permit, Conditions S9.B.2, S8.B.2, and S9.B.3.c).
- Described the status of the outstanding Level One Corrective Action (2015 Permit, Condition S9.B.2).
- Identified the conditions triggering in 2015 the need for the Corrective Action review for zinc (2015 Permit, Condition S9.B.3.a).
- Described the problem(s) that caused the exceedance for zinc in 2015 and identified the dates on which they were discovered (2015 Permit, Condition S9.B.3.b).

Wilcox & Flegel's 2015 Annual Report also does not summarize the status of the Level Two Corrective Action for zinc or the Level Three Corrective Action for turbidity triggered in 2014, as required (2015 Permit, Conditions S9.B.3.c and S9.B.3.d).

Wilcox & Flegel's 2016 Annual Report does not contain the required information for the Level Two Corrective Action that Wilcox & Flegel triggered for zinc in the fourth quarter of 2016. For instance, the 2016 Annual Report should have:

- Contained a summary of the Level Two Corrective Action planned or taken for zinc, including the dates on which these actions were, or would be, completed (2015 Permit, Conditions S9.B.2, S8.B.2, and S9.B.3.c).
- Identified the condition in 2016 triggering the need for Level Two Corrective Action review for zinc (2015 Permit, Condition S9.B.3.a).
- Described the problem(s) that caused the zinc exceedances in 2015 and identified the dates on which they were discovered (2015 Permit, Condition S9.B.3.b).

Wilcox & Flegel's 2016 Annual Report also does not summarize the status of the Level Two Corrective Action for zinc or the Level Three Corrective Action for turbidity triggered in 2014, as required (2015 Permit, Condition S9.B.2).

VII. VIOLATIONS OF THE RECORDKEEPING REQUIREMENTS.

A. Failure to Record Information.

Condition S4.B.3 of the 2010 Permit requires Wilcox & Flegel to record and retain specified information for each stormwater sample taken, including the sample date and time, a notation describing if Wilcox & Flegel collected the sample within the first 30 minutes of stormwater discharge event, an explanation of why Wilcox & Flegel could not collect a sample within the first 30 minutes of a stormwater discharge event, the sample location, method of sampling and preservation, and the individual performing the sampling. Condition S4.B.3 of the 2015 Permit requires Wilcox & Flegel to record and retain specified information

for each stormwater sample taken, including the sample date and time, a notation describing if Wilcox & Flegel collected the sample within the first 12 hours of a stormwater discharge event, an explanation of why Wilcox & Flegel could not collect a sample within the first 12 hours of a stormwater discharge event, the sample location, method of sampling and preservation, the individual performing the sampling, and the weather conditions. Upon information and belief, Wilcox & Flegel is in violation of these conditions as it has not recorded each of these specified items for each sample taken during the last five years.

B. Failure to Retain Records.

Condition S9.C of the Permits requires Wilcox & Flegel to retain, for a minimum of five years, a copy of the Permits, a copy of Wilcox & Flegel's coverage letter, records of all sampling information, inspection reports including required documentation, any other documentation of compliance with permit requirements, all equipment calibration records, all BMP maintenance records, all original recordings for continuous sampling instrumentation, copies of all laboratory results, copies of all required reports, and records of all data used to complete the application for the 2015 Permit. Upon information and belief, Wilcox & Flegel is in violation of these conditions because it has failed to retain records of such information, reports, and other documentation during the last five years.

VIII. REQUEST FOR SWPPP.

Pursuant to Condition S9.F of the 2015 Permit, Columbia Riverkeeper hereby requests that Wilcox & Flegel provide a copy of, or access to, its SWPPP complete with all incorporated plans, monitoring reports, checklists, and training and inspection logs. The copy of the SWPPP and any other communications about this request should be directed to Brian A. Knutsen at the address provided below.

Should Wilcox & Flegel fail to provide the requested complete copy of, or access to, its SWPPP as required by Condition S9.F of the 2015 Permit, it will be in violation of that condition, which violation shall also be subject to this notice of intent to sue and any ensuing lawsuit.

IX. Party Giving Notice of Intent to Sue.

The full name, address, and telephone number of the party giving notice is:

Columbia Riverkeeper
111 Third St.
Hood River, OR 97031
(541) 387-3030

X. Attorneys Representing Riverkeeper.

The attorneys representing Columbia Riverkeeper in this matter are:

Brian A. Knutsen
Kampmeier & Knutsen, PLLC
833 S.E. Main Street, No. 318
Portland, OR 97214
(503) 841-6515

Miles Johnson
Columbia Riverkeeper
111 Third St.
Hood River, OR 97031
(541) 490-0487

XI. CONCLUSION.

The above-described violations reflect those indicated by the information currently available to Columbia Riverkeeper. These violations are ongoing. Columbia Riverkeeper intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.


Under Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects Wilcox & Flegel to a penalty of up to \$37,500 per day. In addition to civil penalties, Columbia Riverkeeper will seek injunctive relief to prevent further CWA violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Columbia Riverkeeper believes that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. Columbia Riverkeeper intends, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Wilson Oil, Inc. and/or Wilcox & Flegel under Section 505(a) of the Clean Water Act.

Columbia Riverkeeper is willing to discuss effective remedies for the violations described in this letter and settlement terms during the 60-day notice period. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if settlement discussions are ongoing when the notice period ends.

Very truly yours,

KAMPMEIER & KNUTSEN, PLLC

By: 
Brian A. Knutsen

CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the United States that I am co-counsel for Columbia Riverkeeper and that on May 31, 2017, I caused copies of the foregoing Notice of Intent to Sue Under the Clean Water Act and Request for Copy of Stormwater Pollution Prevention Plan to be served on the following by depositing them with the U.S. Postal Service, postage prepaid, via certified mail, return receipt requested:

Wilson Oil, Inc.
Attn: Managing Agent
110 Panel Way
Longview, WA 98632

Wilson Oil, Inc.
Attn: Managing Agent
P.O. Box 69
Longview, WA 98632

Wilcox & Flegel
Attn: Managing Agent
110 Panel Way
Longview, WA 98632

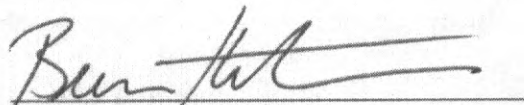
Wilcox & Flegel
Attn: Managing Agent
P.O. Box 69
Longview, WA 98632

Michael A. Claxton
Registered Agent for Wilson Oil, Inc.
1700 Hudson St., Ste. 300
Longview, WA 98632

Director Maia D. Bellon
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Administrator Scott Pruitt
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Acting Regional Administrator Michelle Pirzadeh
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Code: RA-210
Seattle, WA 98101


Brian A. Knutsen